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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael Benjamin Ronci

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08/17/2004

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/768,560

Applicant(s)

RONCI, MICHAEL BENJAMIN

Examiner

Gail Verbitsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claim 2 is finally objected to because of the following informalities: Claim 2: perhaps applicant should replace "horizontal wall" with –vertical wall—and "vertical bottom" with –horizontal bottom—in order to correlate the claim language to the drawings. Is this a proper interpretation of the invention? Appropriate correction is required.

Drawings

2. The drawings are finally objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "horizontal wall" and "vertical bottom" must be shown or the feature(s) canceled from the claim(s) 2. No new matter should be entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 2-4, 6-9 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Pariseau (U.S. 6579006).

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Pariseau discloses in Figs. 11-12 a beverage/ coffee vessel having a thermochromic display 10 adhesively (integrally) attached to the beverage vessel. The display 10 has a printed image display (segment) hot, becomes visible (transparent) and reveals the word "HOT". The display 10 comprises thermochromic ink material (col. 10, line 58). Another display (segment) 16 would reveal the word "COLD" at a temperature different to a temperature of the display 14. Both segments are calibrated to different temperature, thus, have different response to temperature. This would imply, that they have different compositions with thermal optic transitions. The display comprises a supporting substrate 13 and an adhesive backing layer 15. as shown in Figs. 1-2, the vessel has a vertical wall and a horizontal bottom. The thermochromic display is attached to the vertical wall.

For claim 6: as shown in Fig. 1, the thermochromic display is directly printed/ attached onto the surface of the vessel.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 1 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Garmaise et al. (U.S. 5678925) [hereinafter Garmaise] in view of Okuyama (U.S. 3125984).

Garmaise discloses a temperature sensor (display) fixedly attached on the outside wall of a beverage mug and being integral with the mug.

Garmaise does not disclose the particular display claimed by applicant and the mug being made of ceramics. Garmaise does not disclose that the display has a plurality of segments.

Okuyama a thermochromic thermometer (display/ sensor to be attached to a container to be exposed to an elevated temperature, the thermometer is opaque at ambient temperature and becomes transparent when it is exposed to the elevated temperature revealing different segments indicating temperature that they are being exposed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the temperature display disclosed by Garmaise with a thermochromic display, as taught by Okuyama, because both of them are alternate types of temperature sensing devices which will perform the same function if one is replaced with the other.

With respect to the particular material to make the mug, i.e., ceramics, the particular material to make the mug, absent any criticality, is only considered to be the "optimum" or "preferred" material that a person having ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide for the mug disclosed by Garmaise since this is very well known type of material commonly used to make mugs and cups, and since it has been held to be a matter of obvious design choice and within the

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general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention. In re Leshin, 125 USPQ 416.

7. Claims 1 and 5 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pariceau.

Pariceau discloses the device as stated above in paragraph 4.

Although Pariceau clearly disclose a coffee vessel/ cup/ mug, Pariceau does not state that the vessel is a ceramic, as stated in claims 1 and 5.

For claim 6: as shown in Fig. 1, the thermochromic display is directly printed/ placed onto the surface of the vessel.

With respect to the particular material to make the mug, i.e., ceramics, the particular material to make the mug, absent any criticality, is only considered to be the "optimum" or "preferred" material that a person having ordinary skill in the art at the time the invention was made using routine experimentation would have found obvious to provide for the mug disclosed by Pariceau since this is very well known type of material commonly used to make mugs and cups, and since it has been held to be a matter of obvious design choice and within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use of the invention. In re Leshin, 125 USPQ 416.

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to make the vessel, disclosed by Pariceau of ceramic, because ceramic is found to be useful to make cups/ mugs, especially coffee cups because of their slow heating.

Response to Arguments

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8. Applicant's arguments filed on May 26, 2004 have been fully considered but they are not persuasive. Applicant states that the display of the present invention is "fixedly printed" onto the wall. This argument is not persuasive because, although Garmaise alone does not teach this limitation, the combination of Okuama does. Garmaise teaches that a cup/ mug needs a temperature sensing display. Garmaise does not teach the particular display disclosed by applicant. Okuyama teaches a thermochromic display to display temperature of the wall where the display is attached. Therefore, both these displays serve the same purpose by sensing temperature of the wall of interest, and thus, one can be replaced with the other.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



July 26, 2004

I.